IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 15048 of 2007(N)

PETITIONER:

P.ANILKUMAR, HSA (SS),
APPMVHSS, AVANEESWARAM P.O., KUNNIKODE, KOLLAM.

BY ADV. SMT.S.KARTHIKA
SMT.V.P.SEEMANDINI (SR.)
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE
SECRETARY TO GOVT., GENERAL EDUCATION DEPARTMENT,
TRIVANDRUM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
PUNALUR.

4. RAJASREE.T.A., UPSA,
APPMVHSS, AVANEESWARAM P.O., KOLLAM.

Addl.R5. L.PREETHAKUMARI
UPPER PRIMARY SCHOOL ASSISTANT
A.P.P.M.HIGH SCHOOL, AVANEESWARAM-P.O., KOLLAM
(Additional respondent no.5 impleaded as per order dated 18.6.2007 in I.A.8176/07)

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
SRI.M.V.THAMBAN
GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15048 of 2007(N)

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the Govt. order dated 7.12.1988

Ext.P2: True copy of the G.O. Dated 7.1.2002.

Ext.P3: True copy of the G.O. Dated 16.7.2003.

Ext.P4: True copy of the G.O. Dated 19.7.2005.

Ext.P5: True copy of the Govt. order dated 3.8.2006.

Ext.P6: True copy of the G.O. Dated 20.12.2006.

Ext.P7: True copy of the Staff fixation order dated 11.7.2006.

Ext.P8: True copy of the appeal filed by the 4th respondent dated 2.2.2007.

Ext.P9: True copy of the G.O.dated 7.2.2006.

Ext.P10: True copy of the order dated 24.1.2007.

RESPONDENT'S EXHIBITS:

Ext.R4(a); True copy of the G.O.(MS)No.11/2002/G.Edn. Of the Government.

Ext.R4(b): True copy of the Revision petition filed before the Govt. by Smt.T.A. Rajasree.

Ext.R4(c): True copy of the representation filed before the Govt, by Smt.T.A.Rajasree.

Ext.R4(d): True copy of the order No.B3-7856/05 of the Dist. Edl.Officer, Punalur.

Ext.R4(e): True copy of the Appeal filed before the Dy.Director of Edn.

Ext.R4(f): True copy of the decision reported in 2007(1)KLT 766.

Ext.R5(c): True copy of the letter No.B6/20748/06 dated 29.6.2007 issued by the DEO, Kollam.

Ext.R5(d): True copy of the Circular No.23323/J1/89/G.edn. Dated 6.11.1989 issued by the Government.

// True copy //

A.K.BASHEER, J.

W.P.(C)No.15048 OF 2007

Dated this the 13th day of August, 2007

JUDGMENT

Petitioner is a High School Assistant (Social Science) working in an aided High School which has also got Vocational Higher Secondary section. She was appointed in the school with effect from June 5, 2000. The said appointment was approved too.

2. Respondent no.4 was initially appointed in the school as an Upper Primary School Assistant with effect from June 6, 2001. She is a graduate in Mathematics and a Post graduate in English. She obtained B.Ed. in Mathematics. According to respondent no.4, she is qualified to hold both the posts of High School Assistant in Mathematics and English, in view of her qualifications referred to above.

3. It is also not in dispute that respondent no.4 was appointed as High School Assistant (Mathematics) in a leave vacancy with effect from October 29, 2002 till March 12, 2003. After termination of the above leave vacancy, respondent no.4 was reverted as Upper Primary School Assistant. Later, she was promoted as High School Assistant (English) with effect from July

21, 2004 against a newly created vacancy consequent on sanctioning of an additional division in terms of the order of fixation of staff for the academic year 2004-05.

4. It is on record that appointment of respondent no.4 as High School Assistant (Mathematics) against the leave vacancy referred to above, from October 29, 2002 to March 12, 2003 was rejected by the Controlling Officer on the ground that there was no approved manager in the school. It is the common case of the parties that a managerial dispute had been going on in the school since September 2002. Respondent no.4 had challenged the said order before the Government in a revision petition. It is the case of respondent no.4 that at the time when the above revision petition preferred by her was taken up by the Government for consideration, the proposal for approval of her appointment as High School Assistant (English) was also pending consideration. But the petitioner would contend that the above proposal was in fact rejected by the Controlling Officer at that time.

5. Anyhow, Ext.P5 order shows that the Government had only considered the question of approval of appointment of

respondent no.4 as High School Assistant (Mathematics) against the short term leave vacancy significantly the proposal for approval of her appointment as High School Assistant (English) was not taken up for consideration while issuing Ext.P5 order. In short, in Ext.P5 the Government found only that appointment of respondent no.4 as High School Assistant (Mathematics) from October 29, 2002 till March 12, 2003 was liable to be approved. It was ordered accordingly. Further, the Government also found that respondent no.4 was entitled to get salary of Upper Primary School Assistant with effect from July 2004.

6. The appointment and approval of respondent no.4 as High School Assistant was not considered by the Government. It has preferred a review petition which culminated in Ext.P6. The said order is primarily under challenge at the instance of the petitioner in this writ petition. It is contended by the petitioner that Ext.P6 order is exfacie illegal and vitiated for reasons more than one. It is primarily contended by her that the Government did not have power to review its own order. The power under 93 Chapter XIV A KER is only to review an original order. It is also contended that

respondent no.4 did not have any right to invoke the inherent power of the Government to review that order at her instance.

7. It is contented on behalf of the petitioner that at the time of passing of Ext.P6 order, she was not heard by the Government. Incidentally, it is also contended that there were two other qualified High School Assistants who could have been accommodated as High School Assistant (English). In other words, the grievance of the petitioner is that respondent no.4 ought not to have been appointed as High School Assistant (English) which later resulted in retrenchment of the petitioner.

8. Petitioner has also challenged Ext.P10 order passed by the District Educational Officer by which the appointment of respondent no.4 as High School Assistant (English) with effect from July 21, 2004 had been approved upto July 14, 2006. It is the case of the respondent no.4 that she has challenged Ext.P10 order, since the period of her approval as High School Assistant (English) is restricted without any justification, particularly since the Government had issued an order approving her appointment without any time limit. It is also brought to my notice that

respondent no.4 has preferred an appeal against Ext.P10 order before the Deputy Director of Education. A copy of the appeal memorandum is on record as Ext.R4(e).

9. The short question that arises for consideration is whether the petitioner is entitled to impugn Exts.P5 and P6 orders particularly since the admitted position is that he cannot aspire for the post of High School Assistant (English) as he does not concededly possess the requisite qualification. But according to the petitioner, he is entitled to impugn Ext.P6 order for the simple reason, that the Government does not have any inherent power to review its own order or to invoke the power under Rule 93 against an order passed by a subordinate authority. Contention of the petitioner is that Government could have exercised the power under Rule 93 only against an original order. But learned counsel for respondent no.4 invites my attention to the provisions contained in Rule 93 which state that the Government, on application of the above, reviewed the original order. In this context learned counsel for the petitioner invites my attention to a decision rendered by this court in **2007 (2) KLT 325** also.

10. As mentioned earlier, petitioner is not qualified to hold the post of High School Assistant (English). It is pointed out by learned counsel for respondent no.4 that the post of High School Assistant (English) was created in the school in the year 2004 with effect from July 15, 2004 after finalisation of staff strength. Petitioner had been continuing in that post till 2006. Of course she was retrenched because of division fall during the academic year 2006-2007. But still, the fact remains that creation of the post of High School Assistant (English) and her appointment as High School Assistant (English) were not questioned by the petitioner or anybody else at any point of time. It is contended by the petitioner that the District Educational Officer had rejected the approval of appointment of Respondent no.4 as High School Assistant (English) and the said order was not challenged by her. She had impugned the said order before the Government without resorting to the statutory remedy. She had challenged it only before the Government in Ext.R4(b). According to the petitioner, the Government had rejected the claim. But a perusal of Ext.P5 will show that Government had not considered that issue in Ext.P5

order. The Government had omitted to consider the claim of respondent no.4 to approve her appointment as High School Assistant (English). Therefore the Government, in my view was justified in reviewing Ext.P5 order on a motion made by respondent no.4. In that view of the matter, the contention raised by the petitioner that the exercise of power by the Government under Rule 93 in Ext.P6 order, is without jurisdiction, cannot be accepted. On that short ground, the contention raised by the petitioner is repelled. It is also pertinent to note that in **Rakhee v. State of Kerala [2007 (1) KLT 766]**, a Division Bench of this court has laid down that "category for HSA subjects shall be considered against each subject for which sanction has been issued by the District Educational Officer concerned in the Staff Fixation Order for the respective years".

11. As noticed already, post of High School Assistant (English) was created in the school in the year 2004 pursuant to the staff fixation order. The said post is till in existence in the school. Respondent no.4 who was qualified to hold the post of High School Assistant (English) was rightly appointed. Petitioner

who is admittedly not qualified to hold the post of HSA (English) cannot challenge the appointment of respondent no.4 in that post merely for the reason that she may face retrenchment at a later point of time, if respondent no.4 is allowed to continue in the school as HSA (English).

12. As far as respondent no.5 is concerned, her appointment in the consequential vacancy of Upper Primary School Assistant on promotion of respondent no.4 as HSA (English) had been approved by the Department as could be seen from Ext.R5(a). In the light of the view taken by me, the appointment of respondent no.5 as Upper Primary School Assistant cannot be disturbed.

Writ petition fails and it is accordingly dismissed.

A.K.BASHEER, JUDGE

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